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10/723,324	11/26/2003	Lingan Satkunanathan	MS302986.01	9466

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EXAMINER
AUGUSTIN, EVENS J

ART UNIT	PAPER NUMBER
3621	

NOTIFICATION DATE	DELIVERY MODE
02/27/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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PTOL-90A (Rev. 04/07)

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>21 November 2007</u>.
2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.
3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-4,6-18,20-33 and 35-43</u> is/are pending in the application.
    4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5)☐ Claim(s) _____ is/are allowed.
6)☒ Claim(s) <u>1-4, 6-18, 20-33 and 35-43</u> is/are rejected.
7)☐ Claim(s) _____ is/are objected to.
8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.
10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    a)☐ All   b)☐ Some * c)☐ None of:
       1.☐ Certified copies of the priority documents have been received.
       2.☐ Certified copies of the priority documents have been received in Application No. _____.
       3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.
4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.
5)☐ Notice of Informal Patent Application
6)☐ Other: _____.

DETAILED ACTION

1. This is in response to the applicant's arguments/response filed on 21 November 2007.

   Claims 1-4, 6-18, 20-33 and 35-43 are pending in the letter.

Response to Arguments

2. The United States Patent and Trademark Office has fully considered the applicant's

   arguments filed on 21 November 2007, but has not found those arguments to be persuasive.

   Argument 1: Prior Art do not teach the aspect of validation of stored license at regular

interval.

Response 1: According to the Board of Patent Appeals and Interferences, filed on 05/18/2007, in

which Examiner was affirmed, the Board concluded that with regard to term "regular interval"

the "specification does not define the term any more narrowly than the plain meaning would give

it. Appellants cite page 9, 11. 1-3, to argue that "the instant specification teaches checking of

license data with a fixed frequency (e.g., daily), which is a periodic event." Br. 5, 11.21-23.

However, what it actually says is: "Validation component 140 can provide periodic (e.g., daily,

after restoring licenses from back-up ...) validity checks on the license store 110 .... " **The**

Specification actually gives the term "periodic" a much broader definition; <u>one covering</u>

<u>both checking at regular intervals (e.g., daily) and, as can be the case when one restores</u>

<u>licenses from back-up, from time to time.</u> When given the broadest reasonable construction in

light of the Specification as interpreted by one of ordinary skill in the art, the claim encompasses

a system comprising a validation component which checks license data from time to time").

Nevertheless, with regard to the aspect of checking licenses at regular interval, Rivera et al.

describes an invention that relates to a technique for determining whether the number of users or

client computers transacting with a server program exceeds the number of licenses issued for the

users or client computers. According to Rivera et al., the invention checks for license

compliance by performing an audit of the system (col. 3, ll. 53-61). Per Rivera et al., the system

not only designates a time period for checking for license conformance (a time period between

9:15 a.m. and 4:30 p.m. on Jun. 25, 1997), it also establishes a specific regular time interval

(every fifteen-minute interval) (col. 7, ll. 9-12) in which the license check should take place.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness

   rejections set forth in this Office action:

   > A patent may not be obtained though the invention is not identically disclosed or described as set forth in
   > section 102 of this title, if the differences between the subject matter sought to be patented and the prior art
   > are such that the subject matter as a whole would have been obvious at the time the invention was made to
   > a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be
   > negatived by the manner in which the invention was made.

4. Claim 1-4, 6-18, 20-33 and 35-43 are rejected under 35 U.S.C. 102(e) as being unpatentable

   over Christiano (U.S 5,671,412), in view of Rivera et al.(US 6056786).

5. As per claims 1-4, 6-18, 20-33 and 35-43, Christiano discloses a license management system

   comprising of:

   A. Determining/monitoring the number of licenses currently in use (column 7, lines 1-

      45) – *Claims 1, 29,*

B. Taking/initiating corrective actions if the number of licenses in use exceeds the number of licenses allowed (column 7, lines 47-67) – *Claims 1, 29*

C. The license server keeps track of how many licenses are currently checked out and thus can quickly determine if the maximum number of licenses for a program are in use (column 7, lines 9-12) and take corrective actions (column 7, lines 47-67) - *Claim 11*

D. Corrective action includes a warning (column 7, lines 60-61) – *Claims 2, 37*

E. Correction action also includes quitting and not allowing the program to be activated (column 7, lines 65-66), therefore denying users access to the application – *Claims 3, 38*

F. License server (license store), and a license database that houses license data (column 3, lines 63-64, column 4, lines 11-13) – *Claim 4*

G. A diagnostic function that mitigates various license problems (column 3, lines 18-19) – *Claim 8*

H. Christiano's invention teaches a "fail safe" mechanism that may allow a license not to be denied (bypass) (column 4, lines 24-26) when the license has been tampered with/corrupted (column 19, lines 19- 21, column 20, lines 21-22, column 18, lines 24-35). A "fail safe" (bypass) mechanism may check a range of server IP addresses to find an network address within a specified range, that can deliver another copy of the licensed program to the client (column 26, lines 9-44). It is well known that each network address represents the location of a computer on a network. Therefore, each

server on a particular address range represents a "backup store" for the licensed

program/data – *Claims 6-9, 35*

I.   If the fail safe mechanism cannot be implemented and there's a violation, the system

can quit/shutdown the program (column 7, lines 63-67)- *Claims 10-11, 17, 38*

J.   In order for program/license to be "checked out", certain information such as user

name, host name of client computer system is obtained (log in) (column 4, lines 66-

67) – *Claims 12 and 13*

K.   A diagnostic function which can run and be initiated anytime the user is operating the

client computer (column 21, lines 25-28), and can diagnose any program normally

available on the client's computer (column 25, lines 15-17) – *Claim 14*

L.   Corrective action includes a warning (column 7, lines 60-61) – *Claim 15*

M.   Correction action also includes quitting and not allowing the program to be activated

(column 7, lines 65-66) – *Claim 16*

N.   License server (store), and a license database to house license data (column 3, lines

63-64, column 4, lines 11-13) – *Claim 18*

O.   Verifying the validity of license data (column 27, lines 66-67)

P.   License server/store receiving license request (column 4, line 15), keeping track of

licenses being used and taking corrective action is licensing agreement is being

violated (column 7, lines 47-67) - *Claim 20*

Q.   Information such as "check out" license and activation data can be logged/saved by

the system (column 18, lines 57-lines). It is inherent that a software program has to

be installed before being used - *Claims 21, 40*

R. License data includes the number of licenses available for a particular program

(column 14, line 65) – *Claim 22*

S. Christiano teaches a license management system in which license is granted, based on

how much time has elapsed since the licensed program has been in operation (column

7, lines 20-30). In order to establish how much time has elapsed, a beginning time

(issue date) is necessary – *Claim 23*

T. Christiano teaches assigning a unique identifier to a hardware (column 1, lines 28-

29), and assigning a unique key to each license (column 7, lines 21-22, lines 65-67) –

Claim 24

U. The license is denied to the client when the client when the client violates the

licensing policy (column 4, lines 20-24). Christiano's invention teaches a "fail safe"

mechanism that allows licenses not to be denied (bypass) (column 4, lines 24-26).

Therefore, licenses can be "checked out" when there are no licenses available

(column 17, lines 17-21) – *Claim 25*

V. Bypass mechanism checking a range of IP addresses when failures occur to find an IP

address within the specified range that can deliver the licensed program to the client

(column 26, lines 9-44) – *Claim 26*

W. Client computer having display interface to output data (column 6, line 17, column

25, line 46) – *Claims 27,28*

X. Comparing the number of licenses currently in use plus requested against the number

of licenses to be used concurrently (column 19, lines 65-67) – *Claims 30, 31, 33*

Y. If the number of licenses currently being used plus requested is greater than the

number of licenses available, than there may be a violation (column 20, lines 1-13) –

Claim 32

Z. License data can be encrypted (column 10, lines 48-49) – *Claim 36*

AA.   Computer readable medium, carrying instructions for license management system

(column 6, lines 19-59) – *Claims 39 and 43*

BB.   Transmitting a license request including information such as client computer

identifier (column 21, line 42) and identification information for licensed product

(column 10, lines 44-45, column 16, line 30) to a license database. A status message

to allow for activation is sent from the license server to the client computer (column

21, lines 47-67) – *Claim 41*

CC.   License data includes the number of licenses available for a particular program

(column 14, line 65) – *Claim 42*

6. Christiano did not explicitly describe a method/system in which licenses compliance is being

checked at a regular time interval. However, Rivera et al. describes an invention that relates

to a technique for determining whether the number of users or client computers transacting

with a server program exceeds the number of licenses issued for the users or client

computers. According to Rivera et al., the invention checks for license compliance by

performing an audit of the system (col. 3, ll. 53-61). Per Rivera et al., the system not only

designates a time period for checking for license conformance (a time period between 9:15

a.m. and 4:30 p.m. on Jun. 25, 1997), it also establishes a specific regular time interval (every

fifteen-minute interval) (col. 7, ll. 9-12) in which the license check should take place.

7.   Therefore, it would have been obvious for one of ordinary skill in the art at the time of the

applicant's invention to construct a system that would employ a method/system in which

licenses are being checked at a regular time interval. It would have been obvious to one of

ordinary skill in the art at the time of the applicant's invention to implement a method/system

in which licenses are being checked at a regular time interval because it provide license

administrators with greater flexibility in establishing a time period to ensure that customers

comply with the terms of product licenses.

Conclusion

8.   **THIS ACTION IS MADE FINAL.** Any new ground(s) of rejection is due to the

applicant's amendment. Applicant is reminded of the extension of time policy as set forth in

37 CFR 1.136(a).

9. A shortened statutory period for reply to this final action is set to expire THREE MONTHS

from the mailing date of this action. In the event a first reply is filed within TWO MONTHS

of the mailing date of this final action and the advisory action is not mailed until after the end

of the THREE-MONTH shortened statutory period, then the shortened statutory period will

expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the mailing

date of this final action.

10. In determining patentability of an invention over the prior art, the USPTO has considered all

claimed limitations, and interpreted as broadly as their terms reasonably allow. Additionally,

all words in the claims have been considered in judging the patentability of the claims against

the prior art.

11. Any inquiry concerning this communication or earlier communications from the examiner

should be directed to EVENS J. AUGUSTIN whose telephone number is 571-272-6860. The

examiner can normally be reached on 10am - 6pm M-F.

12. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor,

Andrew Fischer can be reached on (571)272-6779.

Evens J. Augustin
February 27, 2008
Art Unit 3621

/ANDREW J. FISCHER/
Supervisory Patent Examiner, Art Unit 3621